



# California Fair Political Practices Commission

May 12, 1987

John R. Shaw  
San Juan Capistrano City Attorney  
32400 Paseo Adelanto  
San Juan Capistrano, CA 92675

Re: Your Request for Advice  
Our File No. I-87-114

Dear Mr. Shaw:

You have requested advice on behalf of City of San Juan Capistrano Councilmember Phillip Schwartz concerning his duties under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your letter states only a general question; it does not seek advice concerning a specific question pending before the city council. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2/</sup>

## QUESTION

As a partner in a planning firm, is Councilmember Schwartz prohibited from participating in decisions on the certification and findings procedures regarding an environmental impact report (EIR), if the EIR is prepared by his firm?

## CONCLUSION

Councilmember Schwartz may not participate in decisions on the certification and findings procedures. You should also consider whether hiring Councilmember Schwartz's firm to prepare the EIR raises issues under Section 1090.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 19329(c).)

### FACTS

Councilmember Phillip Schwartz is a partner in a planning firm known as PBR. Mr. Schwartz has a five percent interest in the firm. Mr. Schwartz heads up the division of the firm that prepares environmental impact reports for its clients, which include public and private parties. He customarily assumes general responsibility for the final EIR product and will frequently sign the environmental impact report and assure that it has been completed in accordance with the California Environmental Quality Act.

There is presently pending, within the City of San Juan Capistrano, a major project proposal to revitalize the downtown area. The City of San Juan Capistrano and the Redevelopment Agency of the City of San Juan Capistrano are presently engaging a redeveloper to redevelop the downtown portion of the City. Mr. Schwartz sits on both the city council and the redevelopment agency.

Once the details of a project are developed, significant zoning and planning decisions will have to be made by the city council. This will include certification of the environmental impact report as being in compliance with the California Environmental Quality Act. In addition, the city council is legally required to make findings as to the mitigation of adverse environmental effects identified in the environmental impact report. These EIR actions are taken concurrently with the planning and zoning decisions.

### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on, among other things:

- (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

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(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a),  
(c) and (d).

Councilmember Schwartz is a partner in PBR and has an investment in the firm which is presumably worth \$1,000 or more. He also receives income from PBR. Accordingly, he may not participate in any decision which will have a reasonably foreseeable material financial effect on PBR.

Regulations 18702, 18702.1 and 18702.2 (copies enclosed) provide guidance in determining whether the effect of a decision on an official's economic interests will be "material." Regulation 18702(b)(3)(B) provides that the effect of a decision will be considered material if "there is a nexus between the governmental decision and the purpose for which the official receives income." In other words, this regulation prevents Councilmember Schwartz from accomplishing as a public official that which he is paid to do as an employee of PBR.

In preparing the EIR, one objective of PBR and Councilmember Schwartz would be to prepare an EIR which the city council will certify is in compliance with the California Environmental Quality Act, and which the city council may determine contains adequate findings as to the mitigation of adverse environmental effects identified in the EIR. By participating in the city council's decision, Councilmember Schwartz could foreseeably further this objective. There would therefore be a nexus between his actions on the city council and his duties as a partner in PBR. (See, Swallow Advice Letter, No. A-86-229, copy enclosed.) Accordingly, Councilmember Schwartz may not participate in decisions on the certification and findings if PBR prepares the EIR.

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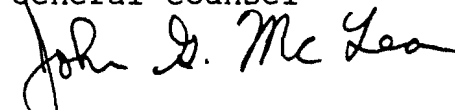
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Before PBR is awarded a contract to prepare the EIR, you should also consider whether issues are raised under Section 1090. That section is outside of the Political Reform Act. Consequently, we are unable to provide advice as to its applicability.

If you have any questions, please contact me at (916) 322-5901.

Very truly yours,

Diane M. Griffiths  
General Counsel

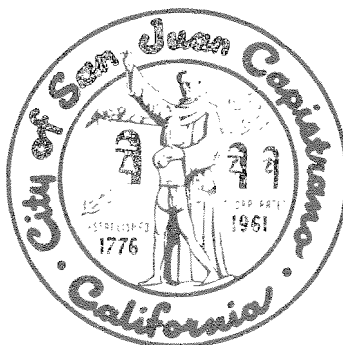
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By: John G. McLean  
Counsel, Legal Division

JGM:km  
Enclosures

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MEMBERS OF THE CITY COUNCIL  
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 PHILLIP R. SCHWARTZE

CITY MANAGER  
 STEPHEN B. JULIAN

April 6, 1987

Ms. Diane Griffiths  
 General Counsel  
 Fair Political Practices Commission  
 428 J Street  
 Sacramento, CA 95814

Re: Conflict of Interest Question/San Juan Capistrano  
 City Council member Phillip R. Schwartz

Dear Ms. Griffiths:

This letter is to request an informal opinion regarding whether City of San Juan Capistrano Councilman Phillip Schwartz would have a conflict of interest in participating in any planning and zoning decision affecting a project in which his planning firm had prepared an Environmental Impact Report for the particular project.

#### FACTS

Councilman Phillip Schwartz is a partner in the planning firm known as PBR based in Costa Mesa. Councilman Schwartz has a five percent interest in the firm. Councilman Schwartz heads up the division of the firm that prepares Environmental Impact Reports for its clients which include public and private parties. He customarily assumes general responsibility for the final EIR product and will frequently sign the Environmental Impact Report as to its completion in accordance with the California Environmental Quality Act.

There is presently pending, within the City of San Juan Capistrano, a major project proposal to revitalize the downtown area. The City of San Juan Capistrano and the Redevelopment Agency of the City of San Juan Capistrano are presently engaging a redeveloper to redevelop the downtown portion of the City. Councilman Schwartz sits on both the City Council and the Redevelopment Agency. Once the details of a project are developed, significant zoning and planning decisions will have to be made by the City Council which will also include the certification of the Environmental Impact Report as in compliance with the California Environmental Quality Act. In addition, the City Council is legally required to make findings as to the mitigation of adverse environmental effects identified in the Environmental Impact Report. These EIR actions

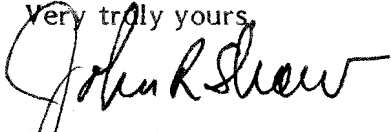
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are taken concurrently as the planning and zoning decisions are rendered.

Councilman Schwartz has raised the question as to whether he would be disqualified from voting on the certification and findings procedures regarding the Environmental Impact Report if his firm, PBR, prepares the Environmental Impact Report to be utilized in assessing whether to grant general plan and zoning approvals required for this downtown project. Councilman Schwartz requests that your office render an informal opinion as to whether a conflict of interest could arise under Government Code Sec. 87100 and 87103(a) - Business Entity, or 87103(c) - Source of Income.

Your cooperation is most appreciated.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John R. Shaw".

John R. Shaw  
City Attorney

JRS/ef

cc: Councilman Phillip R. Schwartz



# California Fair Political Practices Commission

April 14, 1987

John Shaw  
City Attorney  
32400 Paseo Adelanto  
San Juan Capistrano, CA 92675

Re: 87-114

Dear Mr. Shaw:

Your letter requesting advice under the Political Reform Act was received on April 13, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John G. McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).) You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths  
General Counsel

DMG:plh  
cc: Phillip Schwartz